

AMENDED IN SENATE JULY 9, 2001  
AMENDED IN ASSEMBLY APRIL 26, 2001  
AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 57**

**Introduced by Assembly Member Wright**

December 4, 2000

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An act to add Section 332.3 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Wright. Electrical energy: contracts.

~~(1) The~~

*The* Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity.

This bill would state findings and declarations regarding *short-term and long-term* contracts for the purchase of electricity and would state the intent of the Legislature with respect to the procurement of electricity by an electrical corporation. The bill would declare the intent of the Legislature that an electrical corporation, as defined, shall ~~achieve and maintain a portfolio of electricity supplies for its bundled service customers~~ *create a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity related products.*

This bill would amend the act to require the commission *to implement an incentive mechanism applicable to an electrical corporation's*

*procurement of electricity for its customers in accordance with guidelines set forth in the bill. The bill would require the commission to reflect in bundled service rates, and to deem reasonable without engaging in a reasonableness review, any contract entered into by an electrical corporation in accordance with guidelines set forth in the bill.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares that the  
2 customers of an electrical corporation, as defined in Section 218  
3 of the Public Utilities Code, will benefit by ~~increased reliance on~~  
4 ~~long-term contracts, and less the creation of a diversified~~  
5 ~~procurement portfolio consisting of both short-term and long-term~~  
6 ~~electricity and electricity related products and lessening reliance~~  
7 on the spot markets, including the day-ahead and real time  
8 markets. This ~~increased reliance on long-term purchases portfolio~~  
9 will bring needed price stability at reasonable prices to all  
10 consumers and may attract new electric supply into the State of  
11 California. *Procurement responsibilities for the net open positions*  
12 *(load not served by utility retained generation) of the three largest*  
13 *electrical corporations are currently being met by the Department*  
14 *of Water Resources.*

15 (b) It is the intent of the Legislature to do all of the following:  
16 (1) Provide guidance for the procurement of electricity by an  
17 electrical corporation.

18 (2) ~~Establish~~ *Direct the Public Utilities Commission to*  
19 *establish* standards under which the procurement of ~~electricity by~~  
20 ~~an electrical corporation will be deemed reasonable.~~ *electricity*  
21 *and electricity related products by an electrical corporation will*  
22 *be deemed reasonable, and to the extent an electrical corporation*  
23 *requests, require the Public Utilities Commission to provide*  
24 *electrical corporations with an incentive to balance cost and risk*  
25 *goals for procurement.*

26 (3) Eliminate the need for after-the-fact reasonableness  
27 reviews of an electrical corporation's electricity procurement  
28 contracts, practices, and related expenses.

29 SEC. 2. Section 332.3 is added to the Public Utilities Code, to  
30 read:

~~332.3.— (a) It is the intent of the Legislature that, when an electric corporation resumes purchasing of electricity on behalf of retail and end-use customers, an electrical corporation shall achieve and thereafter maintain on an annual basis a portfolio of electric supply commitments for its bundled service customers, which shall consist of forward contracts sufficient to supply no less than 50 percent, and no greater than 95 percent forward contracts, with terms up to 10 years in duration, of that portion of the electrical corporations's supply portfolio that was not already being supplied from generating resources owned or contracted for by electrical corporations. As long as an electrical corporation maintains such a portfolio mix, its portfolio may not be subject to reasonableness reviews by the commission.~~

*332.3. (a) At least 180 days prior to an electrical corporation resuming procurement responsibility, the commission shall implement an incentive mechanism applicable to the electrical corporation's procurement of electricity for its customers. If the commission fails to implement an incentive mechanism within the timeframe prescribed, all purchases entered into by an electrical corporation shall be deemed reasonable and recoverable in rates until the commission implements an incentive mechanism. In developing an incentive mechanism, the commission shall ensure that the incentive mechanism includes all of the following:*

*(1) Clear, achievable, and quantifiable objectives and standards.*

*(2) Timely recovery of procurement costs.*

*(3) Balanced risk and reward incentives.*

*(4) Predetermined market-based price benchmarks.*

*(5) Limited risk and reward for an electrical corporation.*

*(6) Safety valves for major market disruptions.*

~~(b) The commission shall reflect in bundled service rates, and deem reasonable without a reasonableness review, any contract entered into by an electrical corporation in accordance with the guidelines set forth in this section or any contract, for which, upon application therefor by the electrical corporation, the commission has granted approval. For all of those contracts, there may be no after the fact review, whether based on the individual contracts, the electrical corporation's portfolio, or otherwise.~~

~~(c) The commission shall deem standard forward contracts, as described in paragraphs (1) and (4) of subdivision (c), reasonable~~

~~if one or more of the following applies: subdivision (a), and subdivisions (c) to (j), inclusive, or, through an application by an electrical corporation that has been approved by the commission.~~

~~(c) For purposes of this section, a long-term forward contract is a contract with a duration of not less than one month.~~

~~(d) As part of the incentive mechanism implemented pursuant to subdivision (a), the commission shall deem long-term forward contracts reasonable if one or more of the following conditions are met:~~

~~(1) Those contracts are entered into pursuant to or compared with the results of an open, competitive bidding process. One acceptable form for an open, competitive bid is a request for proposals (RFP). The commission shall deem reasonable any contract the price of which is within the range of prices that is no higher than the lowest 25 percent of the bids received during that particular contract which is among 33 percent of the lowest price bids, as determined by cumulative quantity, that are received for a particular product in a given RFP or other bidding process. An RFP shall be considered open and competitive for a particular product if the request was distributed to at least 15 potential suppliers, offers are submitted by at least three suppliers, and notice of the RFP was posted on the electrical corporation's website concurrently with the distribution of the RFP or the procurement, or the transactions are entered into through electricity exchanges or brokerage services which may also include electronic platforms with access to more than 15 potential suppliers.~~

~~(2) The price of the contract is lower than the electrical corporation's then-current volume-weighted portfolio cost as calculated by the electrical corporation. However that portfolio cost shall be determined excluding any generation assets retained by the electrical corporation.~~

~~(3) The contract was entered into by the electrical corporation through the Independent System Operator, the Department of Water Resources, or any other market or power exchange recognized by the commission.~~

~~(4) The contract was executed by the electrical corporation before January 1, 2001.~~

~~(d) The commission shall deem a nonstandard contract for electricity reasonable if the contract price is below the electrical~~

1 ~~corporation's then-current volume-weighted portfolio cost as~~  
2 ~~calculated by the electrical corporation, assuming an equivalent~~  
3 ~~level of annual production. However, that portfolio cost shall be~~  
4 ~~determined excluding any generation assets retained by the~~  
5 ~~electrical corporation. The fuel costs associated with those~~  
6 ~~contracts are deemed reasonable. As used in this subdivision, the~~  
7 ~~term "nonstandard contract for electricity" includes a tolling~~  
8 ~~agreement, a peaking service agreement, a load-following service~~  
9 ~~agreement, a capacity agreement, an exchange agreement, an~~  
10 ~~ancillary services agreement, or another agreement for a service~~  
11 ~~that is not traded on an exchange.~~

12 ~~(e) Electrical corporations may enter into financial and other~~  
13 ~~contracts to moderate the price risk associated with long-term~~  
14 ~~forward contracts, including natural gas used to produce power~~  
15 ~~under these contracts. Those contracts may be gas-based or~~  
16 ~~electricity-based. Those contracts and the premiums paid by the~~  
17 ~~electrical corporations for those contracts also shall be deemed~~  
18 ~~reasonable if the contracts are entered into by the electrical~~  
19 ~~corporation for the purpose of hedging the price risk associated~~  
20 ~~with the electrical corporation's procurement portfolio.~~

21 ~~(f) A purchase transaction entered into between an electrical~~  
22 ~~corporation and a renewable energy developer shall be deemed~~  
23 ~~reasonable if contract prices to the electrical corporation for~~  
24 ~~renewable energy are less than 115 percent of the average of the~~  
25 ~~lowest bid established pursuant to paragraph (1) of subdivision (e).~~

26 ~~(2) The contract was entered into by the electrical corporation~~  
27 ~~through the Independent System Operator, the Department of~~  
28 ~~Water Resources, the California Consumer Power and~~  
29 ~~Conservation Financing Authority, or any other market or~~  
30 ~~exchange recognized by the commission.~~

31 ~~(3) Electrical corporations may enter into long-term forward~~  
32 ~~contracts outside of the process described in paragraphs (1) and~~  
33 ~~(2). Those contracts shall be subject to gains or losses according~~  
34 ~~to the incentive mechanism implemented by the commission~~  
35 ~~pursuant to subdivision (a).~~

36 ~~(e) An electrical corporation may file a procurement plan for~~  
37 ~~the commission's review and approval. A procurement plan shall~~  
38 ~~define all of the following:~~

1     *(1) The specific electricity and electricity related products*  
2     *including type, quantity, duration, and timing of each product to*  
3     *be procured.*

4     *(2) The standards to be used in evaluating those products.*

5     *(3) A process for review and approval or rejection by the*  
6     *commission of contracts proposed by the electrical corporation*  
7     *pursuant to the plan.*

8     *(f) Contracts entered into pursuant to a commission approved*  
9     *procurement plan shall be deemed reasonable, shall be exempt*  
10    *from reasonableness review, and may not be eligible for gains or*  
11    *losses pursuant to the incentive mechanism implemented by the*  
12    *commission pursuant to subdivision (a).*

13    *(g) It is anticipated that the electrical corporation will need to*  
14    *enter into short-term transactions, either through the Independent*  
15    *System Operator's short-term markets or third party transactions,*  
16    *in order to supplement long-term supply contracts, or to balance*  
17    *the hourly load of its customers. Until the commission develops a*  
18    *benchmark that can be used for short-term procurement*  
19    *transactions in an incentive mechanism, these transactions by an*  
20    *electrical corporation shall be deemed reasonable. The*  
21    *commission may not adopt any benchmark for short-term*  
22    *electricity purchases unless that benchmark reasonably represents*  
23    *the market price of short-term purchases taking into account the*  
24    *timing of the purchases, the duration of the purchases, the location*  
25    *of delivery of the purchases, and other factors that are relevant to*  
26    *reasonably estimating market price.*

27    *(h) At least 180 days prior to an electrical corporation*  
28    *resuming procurement responsibility, the commission shall*  
29    *develop a process allowing electrical corporations to enter into*  
30    *financial and other contracts to moderate the price risk associated*  
31    *with serving its customers, including the price risk embedded in its*  
32    *long-term supply contracts. If the commission fails to adopt a*  
33    *process within the time prescribed, electrical corporations may*  
34    *enter into financial and other contracts to moderate the price risk*  
35    *associated with its procurement portfolio. The contracts may be*  
36    *gas-based or electricity-based. The contracts and the prices and*  
37    *premiums paid by the electrical corporations for the contracts*  
38    *shall also be deemed reasonable if the contracts are entered into*  
39    *by the electrical corporation for the purpose of hedging the price*



1 risk associated with the electrical corporation's procurement  
2 portfolio.

3 (i) A purchase transaction entered into between an electrical  
4 corporation and a renewable energy developer shall be deemed  
5 reasonable if contract prices to the electrical corporation for  
6 renewable energy are less than 115 percent of the average of the  
7 lowest bid established pursuant to paragraph (1) of subdivision  
8 (d). Any transaction entered into at market-based rates by an  
9 electrical corporation shall be deemed reasonable if the contract  
10 price to the electrical corporation is less than the incremental cost  
11 of the corporation's retained generation and contractual energy  
12 resources, where that generation and those resources can be  
13 reduced in output by an amount greater than or equal to the  
14 amount purchased.

15 (j) It is anticipated that the electrical corporations will need to  
16 procure from the Independent System Operator and third parties,  
17 or self-provide, ancillary and other related services, and be subject  
18 to charges by the Independent System Operator or its successor for  
19 imbalance energy, congestion charges, unaccounted-for-energy  
20 charges, neutrality adjustment charges, and grid management  
21 charges. Until the commission develops a benchmark that can be  
22 used for ancillary service, and other related services and charges  
23 that may be imposed by the Independent System Operator or its  
24 successor in an incentive mechanism, the costs incurred by an  
25 electrical corporation shall be deemed reasonable.

26 (k) It is anticipated that the electrical corporation will incur  
27 costs in connection with its procurement and risk management  
28 functions needed to serve its customers. These costs include the  
29 cost of staffing these functions as well as the cost of acquiring the  
30 maintaining systems needed to analyze, track, settle, and make  
31 payments pursuant to supply and hedging contracts, and the cost  
32 of meeting credit and collateral requirements. The costs incurred  
33 by an electrical corporation shall be recoverable in rates.

34 ~~(g)~~

35 (l) Under the protection of Section 583, each electrical  
36 corporation shall file quarterly with the commission its long-term  
37 forward contracts and financial contracts, together with an  
38 explanation of how those contracts meet the guidelines set forth in  
39 this section. The commission may verify the accuracy of these



1 submissions for the sole purpose of ensuring compliance with  
2 these guidelines.

3 ~~(h)~~

4 (m) The commission shall adopt a ratemaking mechanism that  
5 ensures that the existing ~~bundled-service~~ customers as of the date  
6 an electrical corporation enters into a bilateral contract to serve  
7 those customers remain responsible for, and pay, their  
8 proportionate share of the electrical corporation's obligations  
9 under each contract.

